

BILL ANALYSIS

Senate Research Center

S.B. 655
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State Affairs
7/16/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the United States and Texas constitutions, eminent domain can only be used for a public use. Specifically, Section 17 (Taking, Damaging, or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises), Article 1, Texas Constitution, says, "No person's property shall be taken, damaged, or destroyed for or applied to public use."

However, in most cases, Texas statutes refer to "public purpose" or simply "purpose" when authorizing the use of eminent domain.

Until 2011, all grants of eminent domain authority revolved around purpose rather than use. The problem with this language was recognized and partially addressed in S.B. 18, 82nd Legislature, Regular Session, 2011, by changing the language in the authorizing statutes for cities, counties, and school districts from public purpose to public use.

Some have questioned the need to make such changes. However, clarity in law is crucial, as can be seen in cases like *Kelo v. City of New London* (545 U.S. 469, 2005) where the United States Supreme Court determined that "public purpose" can include such things as economic development and increased tax revenue. Because the Texas Legislature and Texas courts have closely followed the national trend of blurring the distinction between public use and public purpose, it is important to restore clarity in Texas law by restoring constitutional language in Texas statute. S.B. 655 restores constitutional language in Texas statute by making the "purpose" to "use" change in places in statute where eminent domain is authorized for use. This includes authorizations for entities governed by the Special District Local Laws Code and entities governed by the Water Code. The bill limits the exercise of eminent domain power by adding a section in the Special District Local Laws Code by stating that an entity governed by Title 6 (Water and Wastewater), Special District Local Laws Code, and authorized by law to exercise the power of eminent domain may only exercise the power for a public use. S.B. 655 limits the exercise of eminent domain power by adding a section in the Texas Water Code stating that an entity governed by Chapter 1 (General Provisions), Water Code, and authorized by law to exercise the power of eminent domain may only exercise the power for public use.

S.B. 655 amends current law relating to the exercise of the power of eminent domain by certain authorized entities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1, Special District Local Laws Code, by adding Section 1.004, as follows:

Sec. 1.004. LIMITATION ON EXERCISE OF EMINENT DOMAIN POWER. Authorizes an entity governed by Title 6 (Water and Wastewater), and authorized by law to exercise the power of eminent domain, to only exercise the power for a public use in

accordance with Section 17 (Taking, Damaging, or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises), Article I, Texas Constitution.

SECTION 2. Amends Chapter 1, Water Code, by adding Section 1.005, as follows:

Sec. 1.005. LIMITATION ON EXERCISE OF EMINENT DOMAIN POWER. Authorizes an entity governed by this code, and authorized by law to exercise the power of eminent domain, to only exercise the power for a public use in accordance with Section 17, Article I, Texas Constitution.

SECTION 3. Effective date: upon passage or September 1, 2013.